

*Sedlock*  
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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-199104

**DATE:** February 4, 1981

**MATTER OF:** Emery J. Sedlock - Per diem

**DIGEST:** Navy employee was assigned to USNS Bowditch in port at St John's, Newfoundland. He used commercial lodgings for 2 nights since employee he was to replace did not vacate stateroom he intended to use. Paragraph C8101-3b(6) of Volume 2 of the Joint Travel Regulations prescribed a shipboard per diem rate for the first three days in port, but employee claimed higher locality per diem rate based on recommended change of three day rule. Since employee could have used other shipboard accommodations and since change in regulations may not be retrospectively applied, he is only entitled to per diem granted by regulation in effect at time of his travel.

Mr. Emery J. Sedlock, [an employee of the Department of the Navy, has appealed our Claims Division's denial of his [claim for additional per diem].

The record shows that Mr. Sedlock was assigned a period of temporary duty in excess of seven days aboard the USNS Bowditch in May 1975, the Bowditch being then in port at St. John's, Newfoundland. The employee whom Mr. Sedlock was assigned to relieve remained on the Bowditch for 2 days after Mr. Sedlock's arrival and continued to occupy the stateroom which Mr. Sedlock had intended to occupy. Mr. Sedlock decided to use accommodations ashore and he has claimed the higher locality per diem rate for St. John's rather than the lower per diem rate to which an employee is entitled while aboard a Government vessel.]

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Despite Mr. Sedlock's contention that there was no other bunk made up which he could have used on the Bowditch, the Navy reports that other adequate quarters were available on board the Bowditch when Mr. Sedlock reported on board. Since he did not accept quarters on board the ship, the Navy found that under the three day rule in Paragraph C8101-3b(6) of Volume 2 of the Joint Travel Regulations, February 1, 1975, Mr. Sedlock should bear the extra expense of private accommodations in St. John's on his own.

Our Claims Division agreed with the Navy and found that Paragraph C8101-3b(6) limited Mr. Sedlock's per diem reimbursement to the shipboard rate.

Paragraph C8101-3b(6) states:

"Aboard Government Ships. The per diem rates in subpar. 1c are prescribed for travel and temporary duty aboard a Government ship outside the continental United States. In the event the traveler uses commercial quarters during stopovers in port, the following per diem rates are applicable for the stopover period:

1. "When assigned to extended voyages of 7 or more consecutive calendar days, the rate of per diem for the first 3 days in port is the appropriate \$2 or \$4 rate prescribed in subpar. 2c, increased by the actual charges for meals, if any, and rounded to the next higher dollar, and the rate of per diem beginning with the 4th day in port is the appropriate rate prescribed in Appendix C.\*\*\*"

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"When an employee reports to a Government ship for temporary duty while the ship is in port, he is paid the same per diem rate as all other employees assigned to duty aboard the ship."

See Peter Bockman, B-184075, August 16, 1976.

On appeal, Mr. Sedlock forwards to us a letter from Mr. Carl W. Clewlow, Deputy Assistant Secretary of Defense, to Mr. John Donlon, President, American Federation of Government Workers, Local 1028, dated March 21, 1980, in which Mr. Clewlow states that the Department of Defense would have no objection "if the JTR was revised to return to the previous three-day rule." Mr. Sedlock believes that Mr. Clewlow's letter supports his claim because he believes the JTR has never been satisfactorily interpreted on this matter.

We do not necessarily agree with Mr. Sedlock's reading of Mr. Clewlow's letter, but in any event whether or not the regulation is changed to provide for an increased per diem payment to employees occupying commercial quarters when their ship is in port is immaterial to Mr. Sedlock's claim. His claim must be governed by the regulation in effect at the time of his travel, namely Paragraph C8101-3b(6), February 1, 1975. Even if the regulation were subsequently changed the change would not have retrospective effect but would apply prospectively only. When regulations are properly issued, rights thereunder become fixed and although such regulations may be amended prospectively to increase or decrease rights given thereby, they normally may not be amended retroactively. 47 Comp. Gen. 127 (1967). Therefore Mr. Sedlock's entitlement to per diem is governed by the regulation then in effect.

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Mr. Sedlock's claim for additional per diem is denied.]

*Milton J. Fowler*

For the Comptroller General  
of the United States